

The Gazette of India



EXTRAORDINARY PART II—Section 2 PUBLISHED BY AUTHORITY

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LOK SABHA

The following Bills were introduced in Lok Sabha on the 5th December, 1962:—

*BILL No. 123 OF 1962

A Bill to make provisions for the insurance of certain property in India against damage by enemy action during the period of emergency.

BE it enacted by Parliament in the Thirteenth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Emergency Risks (Factories) Insurance Act, 1962. Short title, extent and duration.

(2) It extends to the whole of India.

(3) It shall remain in force during the period of operation of the Proclamation of Emergency issued on the 26th October, 1962, and for such further period as the Central Government may, by notification in the Official Gazette, declare to be the period of emergency for the purposes of this Act, but its expiry shall not affect anything done or omitted to be done before such expiry and section 6 of the General Clauses Act, 1897, shall apply upon the expiry of this Act as if it had been repealed by a Central Act.

12 of 1897.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) “buildings” includes foundations, plinths, floors, staircases, tanks, engine and boiler beds, chimneys, flues and boundary walls;

*The President has, in pursuance of clauses (1) and (3) of article 117 of the Constitution of India, recommended to Lok Sabha, the introduction and consideration of the Bill.

(1223)

(b) "enemy" means—

(i) any person or country committing external aggression against India;

(ii) any person belonging to a country committing such aggression;

(iii) such other country as may be declared by the Central Government to be assisting the country committing such aggression;

(iv) any person belonging to such other country;

(c) "factory" means a factory as defined in clause (m) of section 2 of the Factories Act, 1948;

63 of 1948.

(d) "factory buildings" includes all buildings comprised in the factory, and such other buildings (including residential buildings for staff and workmen, hospitals and welfare centres) within a radius of two miles from the main factory building as are in the same ownership or occupation as the factory and are used for the purposes of the factory;

(e) "the Fund" means the Emergency Risks (Factories) Insurance Fund constituted under section 7;

(f) "insurable value" of property means the value of the property as ascertained for the purposes of insurance under this Act;

(g) "occupier" of a factory has the meaning assigned to it in clause (n) of section 2 of the Factories Act, 1948;

63 of 1948.

(h) "owner" of a factory includes, when parts of the property insurable under this Act in relation to the factory are owned by different persons, each such person in respect of the part owned by him;

(i) "property insurable under this Act" means, in relation to any factory, the factory buildings and, except where they are for the time being goods insurable under the Emergency Risks (Goods) Insurance Act, 1962, all plant and machinery in the factory, all materials in the factory for use in the production or transmission of motive power, or in the maintenance of plant and machinery or in the construction or reconstruction or maintenance of factory buildings, and such other plant, machinery or materials as may be specified in the Scheme;

(j) "quarter" means a period of three months commencing on the first day of January, April, July or October;

(k) "the Scheme" means the Emergency Risks (Factories) Insurance Scheme made under this Act;

(l) "emergency risks" means such risks arising from—

(i) action taken by an enemy or action taken in combating an enemy or in repelling an imagined attack by an enemy;

(ii) any explosion or fire which involves any explosives or munitions or other dangerous things required for the purposes of defence against any action of an enemy and which happens or is caused by, through, or in connection with the manufacture, storage or transportation of any such explosives, munitions or other dangerous things;

(iii) measures taken under proper authority to avoid the spreading of, or otherwise to mitigate, the consequences of damage occurring (whether accidentally or not) as the direct result of any such action as is described in sub-clause (i) or of any such explosion or fire as is described in sub-clause (ii);

(iv) precautionary or preparatory measures taken under proper authority with a view to preventing or hindering the carrying out of any attack by an enemy, being measures involving risk to property;

(v) precautionary or preparatory measures involving the doing of work on land and taken under proper authority in any way in anticipation of enemy action, being measures involving risk to property;

(vi) precautionary or preparatory measures taken under proper authority with a view to denying facilities to an enemy, being measures involving damage to or diminution of the value of property.

CHAPTER II

EMERGENCY RISKS (FACTORIES) INSURANCE SCHEME

3. (1) The Central Government may, by notification in the Official Gazette, put into operation a scheme to be called the Emergency Risks (Factories) Insurance Scheme, whereby the Central Government undertakes in relation to factories the liability of insuring property insurable under this Act against emergency risks, to the extent provided by or under this Act.

Emergency
Risks (Fac-
tories) Insu-
rance
Scheme

(2) The Scheme may extend to the undertaking by the Central Government in relation to any person in India of the liability of insuring such person against emergency risks in respect of any property insurable under this Act which is not owned by him but in which he has an interest, up to the extent of such interest.

(3) The Scheme shall be such as to secure—

(a) that the liability of the Central Government as insurer shall not extend to more than eighty per cent. of the insurable value of the property insurable;

(b) that any liability of the Central Government as insurer under the Scheme is determined by a policy of insurance issued, in the form and in respect of a period not exceeding the period specified in the Scheme, by a person acting on behalf of the Central Government:

Provided that the form of policy may be such as to limit the extent and nature of the indemnity provided by the Central Government and to impose conditions subject to which the indemnity is provided;

(c) that any premium under a policy so issued is payable at such rate as may, for the time being, be specified in the Scheme;

(d) that the amount of any one premium payable under a policy so issued is not less than such sum as may be specified in the Scheme.

(4) The Scheme may provide—

(a) for undertaking in relation to works in course of construction which, when completed, will become factories, and such plant and machinery appertaining to such works as may be specified in the Scheme, the same liabilities as are undertaken by the Scheme in relation to factories;

(b) that the payments due under a policy of insurance issued under the Scheme, may at the option of the Central Government, take either of the following forms, namely:—

(i) payment, within the limits of the liability assumed by the Central Government and in such manner and by such instalments as the Central Government may think fit, of the cost necessary to restore the property as far as practicable to the condition in which it existed before the occurrence of the damage, or

(ii) compensation, within the aforesaid limits, for the loss in value, ascertained on the basis of values and prices ruling at the time at which the policy of insurance was taken out, or at which the loss occurred, whichever is less, suffered by the property as a result of the damage, after due allowance has been made for depreciation during the period of insurance cover;

(c) that payments due under a policy of insurance under the Scheme may be postponed to any time before the expiry of one year from the date on which this Act ceases to be in force, or, subject to payment of interest at the rate of two per cent. per annum from the expiry of the said year, to any later date;

(d) for making it an express or implied condition of any policy of insurance issued under the Scheme—

(i) that the owner or occupier of a factory shall comply with all regulations or instructions made or issued under the authority of Government for safeguarding the property against damage from emergency risks, or

(ii) that, where the Central Government exercises its option to pay the cost necessary to restore the property to its original condition the owner of the factory shall, if so required by the Central Government, reconstruct the factory or remove the factory to and reconstruct it in another locality.

(5) Different forms of policies may be specified in the Scheme under sub-section (3) in relation to different classes of factories.

(6) The Central Government may, by notification in the Official Gazette, add to, amend or vary any Scheme made under this Act.

4. The Central Government may, by notification in the Official Gazette, employ or authorise the employment of any person to act as its agent for any of the purposes of this Act, and may pay to the person so employed such remuneration as it may think fit.

Employment of agents by the Central Government.

5. (1) While the Scheme is in operation, every owner of a factory, except a factory belonging to Government or a factory exempted under section 15 from the provisions of this Act, shall, by such date as may be specified in this behalf by the Central Government by notification in the Official Gazette, or, in respect of premises becoming a factory or property becoming property insurable under this Act after that date or in a case to which sub-section (2) refers, before the commencement of the quarter next following that in which

Duty of owner of factory to insure against emergency risks.

the premises become a factory or the property becomes insurable under this Act, or as the case may be, in which the reconstruction of the factory is completed, take out a policy of insurance against emergency risks issued in accordance with the Scheme, whereby he is insured in respect of all property insurable under this Act, which appertains to the factory for a sum not less than the insurable value of such property:

Provided that where the owner of the factory is not himself the occupier of the factory, the occupier of the factory shall, unless the owner has already taken out a policy of insurance as required by this sub-section, himself take out the policy, and in such a case the occupier shall be deemed to act as the agent of the owner and shall be entitled to receive from the owner all sums paid as premiums on the policy.

(2) The obligation imposed by sub-section (1) includes, when the owner of the factory is required by the Central Government to reconstruct a factory which has suffered damage, an obligation to take out an additional policy of insurance as required by the sub-section in respect of the reconstructed factory.

(3) When a factory in respect of which a policy of insurance against emergency risks has been taken out as required by this section is transferred from one owner to another or there is a change of occupier of the factory, the policy may be transferred to the new owner or occupier and such new owner or occupier shall succeed to all rights and liabilities under and in relation to the policy as if the policy had been in the first instance taken out by him.

(4) Whoever contravenes the provisions of sub-section (1) or the proviso thereto, or, having taken out a policy of insurance as required by that sub-section, fails to pay any instalment of premium thereon which is subsequently due, shall be punishable with fine which may extend to two thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first on which the contravention or failure continues, and such punishment shall be without prejudice to any other penalty or liability incurred in consequence of such contravention or failure.

(5) Where any offence under sub-section (4) is tried by a Presidency magistrate or a magistrate of the first class, then, notwithstanding anything contained in the Code of Criminal Procedure, 1898, the magistrate trying the offence may pass any sentence authorised by that sub-section.

6. (1) After the date on which the Scheme is put into operation, no person shall, except as a person authorised by the Central Government as its agent to issue policies in pursuance of the Scheme, carry on the business of insuring factories in India against emergency risks in respect of property insurable under this Act.

Restrictions
on carrying
on certain
insurance
business

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to five thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first on which the contravention continues.

7. (1) The Central Government may, after due appropriation made by Parliament by law in this behalf, transfer in each financial year, to a fund to be called the Emergency Risks (Factories) Insurance Fund (hereinafter referred to as the "Fund") such sums, as may be considered necessary, not exceeding the sums received by the Central Government by way of insurance premiums under the Scheme, or by way of payments made on composition of offences under section 13 by way of expenses or compensation awarded by a Court, under section 545 of the Code of Criminal Procedure, 1898, out of any fine imposed in any prosecution under this Act.

Emergency
Risks (Facto-
ries) Insu-
rance Fund.

5 of 1898.

(2) There shall be paid from out of the Fund all sums required for the discharge by the Central Government of any of its liabilities under the Scheme, or for payments by the Central Government under section 10, or for the payment by the Central Government of the remuneration and expenses of agents employed for the purposes of the Scheme.

(3) If at any time when a payment is to be made out of the Fund the sum standing to the credit of the Fund is less than the sum required for the making of that payment, an amount equal to the deficiency shall, after due appropriation made by Parliament by law, be paid into the Fund as an advance out of the Consolidated Fund of India.

(4) If at any time the amount standing to the credit of the Fund exceeds the sum which, in the opinion of the Central Government, is likely to be required for the making of payments out of the Fund, the excess shall be disposed of in such manner as the Central Government may think fit.

(5) The Central Government shall prepare in such form and manner as may be specified in the Scheme and shall publish either annually or at such shorter intervals as may be specified therein, an account of all sums received into and paid out of the Fund.

CHAPTER III

MISCELLANEOUS

Power of
Central Go-
vernment to
obtain in-
formation.

8. (1) Any person authorised in this behalf by the Central Government may, for the purpose of ascertaining whether or not the owner or occupier of any property required to be insured under this Act has taken out a policy of insurance as required by this Act in respect of such property, or for the purpose of investigating the insurable value of any property insured, or required to be insured, or proposed for insurance under this Act, or for the purpose of estimating the damage suffered by any property insured under this Act,—

(a) require the owner or occupier of the property, or any person carrying on in India the business of fire insurance in respect of the property, to submit to him such accounts, books or other documents or to furnish to him such information as he may reasonably think necessary, or

(b) at any reasonable time, enter any premises comprising or containing the property, inspect such premises or property, and require any person found on such premises who is for the time being in charge thereof, or in control thereof, or whom he believes to be in possession of information relevant to his investigation, to produce to him and allow him to examine such accounts, books or other documents as he may think necessary, or to furnish to him such other information as he may reasonably think necessary.

(2) Whoever wilfully obstructs any person in the exercise of his powers under this section or fails without reasonable excuse to comply with any demand made thereunder shall, in respect of each occasion on which any such obstruction or failure takes place, be punishable with fine which may extend to one thousand rupees.

(3) Whoever, in purporting to comply with his obligations under this section, knowingly or recklessly makes a statement false in a material particular shall be punishable with fine which may extend to one thousand rupees.

(4) Where in any proceedings in respect of a contravention of section 5 in relation to any factory, it is proved, in relation to that factory—

(a) that a demand for the production of a policy of insurance issued in accordance with the Scheme insuring the owner or occupier of the factory was duly made under this section and was not complied with, and

(b) that the person making the demand was not satisfied that there was such a policy in existence,

it shall be presumed, except in so far as the contrary is proved, that the said section 5 was being contravened in relation to that factory at the time when the demand was made and continued to be contravened in relation to that factory at all times thereafter.

9. If any person, for the purpose of obtaining for himself or any other person any payment in respect of any damage due to the action of the enemy or under a policy issued in pursuance of the Scheme—

Punishment for giving false information.

(a) furnishes any information which he knows to be false in a material particular, or recklessly furnishes any information which is false in a material particular, or

(b) with intent to deceive, produces, furnishes, sends or otherwise makes use of any book, account or other document which is false in a material particular, or—

(c) with intent to deceive, withholds any material information,

he shall be punishable with fine which may extend to five thousand rupees or with imprisonment for a term not exceeding three months or with both.

10. Where the Central Government requires the owner of a factory to remove the factory and to reconstruct it in another locality, the Central Government shall make to such owner out of the Fund such payments, in addition to any sum payable under the policy of insurance, as it considers sufficient to defray the cost of the removal and, if necessary, the replacement of any part of the property in respect of which no compensation is payable.

Payments towards cost of removal and reconstruction of factory.

11. (1) Without prejudice to the provisions of sub-section (4) of section 5, where any person has failed to insure as, or to the full amount, required by this Act, and has thereby evaded the payment by way of premium of any money which he would have had to pay but for such failure, an officer authorised in this behalf by the Central Government may determine the amount payment of which has been so evaded and the amount so determined shall be payable by such person and shall be recoverable from him as provided in sub-section (2).

Recovery of premiums unpaid.

(2) Any instalment of premium due on a policy of insurance issued under the Scheme, and any amount determined as payable under sub-section (1), shall be recoverable as an arrear of land revenue and shall be a first charge on the property in respect of which the default was made.

(3) A person against whom a determination is made under sub-section (1) may, within the period specified in the Scheme, appeal against such determination to the Central Government whose decision thereon shall be final.

**Limitation
on prosecutions.**

12. No prosecution for any offence punishable under this Act shall be instituted against any person except by, or with the consent of, the Central Government or an authority authorised in this behalf by the Central Government.

**Composition
of offences.**

13. Any offence punishable under sub-section (4) of section 5 may, either before or after the institution of the prosecution, be compounded by the Central Government, or by any authority authorised in this behalf by the Central Government on payment for credit to the Fund of such sum as the Central Government or such authority, as the case may be, thinks fit.

**Bar of legal
proceedings.**

14. (1) No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

(2) No suit shall be maintainable in any civil court against the Central Government, or a person acting as its agent under section 4, for the refund of any money paid or purporting to have been paid as premium on a policy of insurance taken out or purporting to have been taken out under this Act.

**Power to
exempt factories.**

15. (1) The Central Government may, by notification in the Official Gazette, exempt any class or description of factories from the provisions of this Act requiring such factories to be insured or to continue to be insured under this Act; but such exemption shall not prejudice the infliction of any penalty or the accrual of any liability incurred before the date on which the exemption takes effect.

(2) In granting any exemption under this section the Central Government may direct that the exemption shall take effect or be deemed to have taken effect on a specified date after or before the date of the notification.

**Refund of
premiums in
certain cases.**

16. Where any factory has been insured by any owner or occupier thereof for any period, and before that period has elapsed the factory or the factory of that description has ceased, by virtue of a notification under sub-section (1) of section 15 to be insurable under this Act, the person who has insured the factory shall be entitled to a proportionate refund of the premium.

17. (1) The Central Government may, by notification in the Official Gazette, declare that the provisions of this Act and of the Scheme made thereunder shall apply to the insuring against emergency risks of—

Power of Central Government to extend the Act and Scheme to undertakings.

35 of 1952.

(a) the plant and machinery, whether above or below ground, appertaining to mines as defined in the Mines Act, 1952, buildings appertaining to mines and within a radius of two miles from the mine excavation and in relation to such plant, machinery and buildings, such materials above ground as would, if the mine were a factory, be included in the term "property insurable under this Act";

(b) derricks, drills and rigs and group gathering stations and storage tank of an oil mine, plant and machinery required for pumping, refining or processing any mineral oil, and pipe lines;

(c) the whole or a specified part of the distribution systems of gas supply undertakings generally, or of specified gas supply undertakings;

(d) the whole or a specified part of the distribution and transmission systems, sub-stations, switch houses and transformer houses of electric supply undertakings generally, or of specified electric supply undertakings;

(e) the whole or a specified part of the sluice houses, valve houses, water-pipe lines, penstocks and any other plant and machinery pertaining to the intake of hydraulic power of hydro-electric supply undertakings generally, or of specified hydro-electric supply undertakings;

(f) standing tea crops in any garden belonging to the owner of any factory;

as they apply to property insurable under this Act which appertains to a factory.

(2) In interpreting this Act as applied by notification under clause (a) of sub-section (1) to mines, references to the owner of a factory shall be read as references to the owner or agent of a mine as defined in the Mines Act, 1952, and references to the occupier of a factory shall be read as references to the agent of a mine as defined in that Act; and in interpreting this Act as applied by notification under any of the clauses of sub-section (1), "property insurable under this Act" shall be interpreted as meaning all property to which the Scheme is by the said notification declared to apply.

35 of 1952.

18. (1) The Central Government may, by notification in the Official Gazette, direct that the provisions of this Act and of the Scheme made thereunder shall extend and shall so far as they are applicable, apply in the same manner as they apply to the insurance of

Power of Central Government to extend the Act to inland vessels.

property insurable under this Act in relation to a factory, to the insurance against emergency risks of inland vessels (including the hull, machinery and fittings thereof, fuel carried therein, and stores carried therein for the use of the crew), being the property of any trading corporation or of any body of Port Trustees or Commissioners or of any other person specified in this behalf by the Central Government, where such vessels, fuel and stores are not for the time being plant or materials insurable in relation to a factory under this Act and the Scheme thereunder, or goods insurable under the Emergency Risks (Goods) Insurance Scheme made under the Emergency Risks (Goods) Insurance Act, 1962.

(2) In this section, unless the context otherwise requires,—

(a) “inland vessel” means a vessel not ordinarily plying outside the limits of the territorial waters surrounding India;

(b) “vessel” means a vessel the value of which including the hull, machinery and fittings but excluding cargo, fuel and stores carried for the use of the crew, as ascertained for the purpose of insurance under the Scheme, exceeds two thousand and five hundred rupees, propelled wholly or in part by steam, electrical or mechanical power, or adapted for towing by a vessel so propelled, and includes any such vessel while used as a place of habitation or for storage of goods but does not include a vessel of the type commonly called country craft.

(3) In the application of this Act and of the Scheme made thereunder to the insurance of inland vessels—

(a) the obligation imposed by sub-section (1) of section 5 on the owner of a factory shall, in the case of a trading corporation or body of Port Trustees or Commissioners or any other person whose inland vessels become insurable under this Act and the Scheme thereunder, be an obligation imposed on the trading corporation, body of Port Trustees or Commissioners or such other person to take out by such date as may be specified in this behalf by the Central Government by a notification in the Official Gazette, a policy of insurance against emergency risks issued in accordance with the Scheme whereby it is insured in respect of all inland vessels (including fuel carried by them and stores carried by them for the use of the crew) owned by it or him, as the case may be, for a sum not less than the insurable value of such vessels, fuel and stores; and this obligation shall in the case of a trading corporation incorporated outside India rest upon the manager of the principal place of business in India of the corporation;

(b) the prohibition contained in sub-section (1) of section 6 of this Act shall be deemed to include a prohibition of carrying

on business of insuring inland vessels in India against emergency risks for insurance against which provision is made under the Scheme;

(c) nothing in this Act shall prevent the fixing of a rate of premium under or the prescription for the time being of any period or periods for policies issued in connection with the insurance of inland vessels different from any rate fixed under or any periods prescribed for policies issued in connection with the insurance of property appertaining to a factory:

19. If any difficulty arises in giving effect to the provisions of this Act, and in particular, if any doubt arises as to whether a person is insurable in respect of any property insurable under this Act, the Central Government may, by order, make such directions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for the removal of the doubt or difficulty; and the decision of the Central Government, in such cases, shall be final.

Power to
remove diffi-
culties.

STATEMENT OF OBJECTS AND REASONS

In view of the present emergency, it is considered desirable that provision should be made for the insurance of factories and inland vessels against the risk of loss or damage as a result of enemy action. As the degree of risk which may be involved is necessarily uncertain, it will not be possible for the established insurers to cover it in the normal course, and the Scheme will have to be formulated, brought into force, and operated on behalf of the Central Government.

2. The Bill seeks to provide for a Scheme of insurance based on premium rates which can be varied within certain limits with reference to the actual nature or extent of the risk as it may exist from time to time. The various provisions are explained in detail in the notes on clauses which are attached to the bill.

NEW DELHI;

MORARJI DESAI.

The 29th November, 1962.

Notes on clauses

Clause 1, in effect, provides that the bill, when it is passed into law, shall come into force immediately in all the States and territories of India including Jammu and Kashmir. The provisions of the Act will continue to be in force throughout the period of the present emergency and for a reasonable period thereafter.

Clause 2 defines the words and expressions used in the bill. The definition of "enemy" is based on the corresponding definition in the Defence of India Bill, 1962. The definition of "emergency risks" is based on the provisions of the previous law as it was in force during the second world war; it is comprehensive, and includes any risk of loss or damage through explosions or through the adoption of 'scorched earth' or 'denial' measures. Property insurable under the Act will include factory buildings, plant and machinery, and materials used in or by the factory, but will exclude any goods which are insurable under the Emergency Risks (Goods) Insurance Scheme.

Clause 3 provides for a scheme of insurance of factories within the scope of the provisions of the bill to be prepared and brought into force by notification at an appropriate stage by the Central Government. It is clarified for the avoidance of any doubt that persons interested in any property insurable under the Act may insure that property on their initiative, in lieu of the persons who as the owners for the purposes of the scheme may be bound or compelled to insure the property in the normal course.

The Central Government's liability as the insurer will be limited in each case to eighty per cent of the insurable value of the property and may be discharged either by payment in cash or by reimbursement of the cost of restoring the factory or other insured property to the condition in which it was before the damage. In the event of a factory being reconstructed, the Central Government may provide, as a condition of such restriction, that the factory shall be removed to some other locality. The policies of insurance will be issued for periods, the duration of which will be determined by the Central Government, but the periods of validity of the policies may be extended from time to time. The premiums will be charged at a variable rate which will be determined from time to time by the Central Government, after taking into account the actual degree of risk which may be involved.

Factories in the course of construction will be eligible for protection under the scheme, in the same manner and to the same extent, as completed factories which are working normally.

Clause 4 provides for the appointment of an agent to administer the scheme on behalf of the Central Government.

Clause 5 provides that when a scheme of insurance is notified and brought into force, the owner of a factory, or where the owner is not himself the occupier, the occupier acting on his behalf, will be compelled to insure the factory and other properties to the extent that they are insurable under the scheme.

In the event of a change in the ownership of a factory during the currency of a policy of insurance issued in relation to it, the policy, along with the rights and liabilities thereunder, will be transferred to the new owner.

Clause 6 prohibits private insurers from competing with the Central Government in regard to the coverage of the abnormal emergency risks for which provision is made in the bill.

Clause 7 provides for the establishment of an Emergency Risks (Factories) Insurance Fund. The Fund is intended to be self-sufficient, but provision is being made for the Central Government to advance to the Fund, if it is temporarily in deficit, any amount which may be needed for meeting the expenditure which may be chargeable to the Fund. If there is ultimately a surplus in the Fund after providing for all the obligations to the policy-holders, appropriate provision in regard to the utilisation of the surplus will be made by the Central Government.

Clauses 8 and 9.—*Clause 8* provides for the grant of power to the Central Government to obtain information or to carry out such inspections as may be necessary and *Clause 9* provides for penalties for furnishing any false information.

Clause 10 provides that if the Central Government requires any factory to be removed to any other locality, the cost of such removal will also be paid out of the Emergency Risks (Factories) Insurance Fund.

Clause 11 provides for the recovery of any amount due to the Central Government which may remain outstanding, either because the payment has been evaded or because it has been in arrears.

Clauses 12 to 14 contain the usual provisions in regard to the limitation of prosecutions the composition of offences and bar of

legal proceedings in respect of action taken in good faith under the relevant provisions of the bill.

Clauses 15 and 16.—Clause 15 provides for the grant of power to the Central Government to exempt factories belonging to any particular class, if it is considered necessary or expedient to do so, while Clause 16 provides for a proportionate refund of the premiums in such cases.

Clauses 17 and 18 provide for the extension of the scheme of insurance so as to cover the plant and machinery and other similar equipment of mines, including oil mines, and the properties of gas and electricity supply undertakings, and inland vessels.

Clause 19 provides for the grant of power to the Central Government to remove difficulties, if any.

FINANCIAL MEMORANDUM

Clause 7 of the Bill provides that an Emergency Risks (Factories) Insurance Fund will be established and that an amount not exceeding the amount of the premiums collected under the Scheme of insurance will be paid into that fund after due appropriation by law. The degree of risk as a result of enemy action is necessarily uncertain and a reasonably accurate estimate of the value of the property insurable in accordance with the provisions of the Bill is not also available. It is not possible, therefore, to anticipate exactly at this stage the rate at which premiums may have to be fixed or the amounts receivable on account of the Emergency Risks (Factories) Insurance Fund. It is envisaged, however, that the rate of premium may not exceed four per cent. in two years or two per cent. per annum payable in suitable quarterly instalments. It is also expected that the Scheme may not involve any net burden on the Consolidated Fund of India, over and above the obligation to transfer to the Emergency Risks (Factories) Insurance Fund from out of the Consolidated Fund the premiums received under the Scheme.

The cost of administering the Scheme is expected to amount to about Rs. 1·5 lakhs on account of the special officer's organisation.

MEMORANDUM ON DELEGATED LEGISLATION

Sub-clause (3) of clause (1) provides that the Central Government may by notification in the Official Gazette declare that the period of the emergency for the purposes of the Emergency Risks (Factories) Insurance Scheme will be extended until some suitable date after the expiry of the emergency which has been proclaimed by the President under Article 352 of the Constitution. The delegation of power to the Central Government for this purpose is unavoidable.

2. There is no other provision in the Bill which involves any delegation of powers which is not of a routine or normal character.

*BILL NO. 124 OF 1962

A Bill to make certain provisions for the insurance of goods in India against damage by enemy action during the period of emergency.

BE it enacted by Parliament in the Thirteenth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title,
extent and
duration.

1. (1) This Act may be called the Emergency Risks (Goods) Insurance Act, 1962.

(2) It extends to the whole of India.

(3) It shall remain in force during the period of operation of the Proclamation of Emergency issued on the 26th October, 1962 and for such further period as the Central Government may, by notification in the Official Gazette, declare to be the period of emergency for the purposes of this Act, but its expiry shall not affect anything done or omitted to be done before such expiry and section 6 of the General Clauses Act, 1897, shall apply upon the expiry of this Act as if it had been repealed by a Central Act.

10 of 1897.

Definition.

2. In this Act, unless the context otherwise requires,—

(a) "enemy" means—

(i) any person or country committing external aggression against India;

*The President has, in pursuance of clauses(i) and (3) of article 117 of the Constitution of India, recommended to Lok Sabha the introduction and consideration of the Bill,

(ii) any person belonging to a country committing such aggression;

(iii) such other country as may be declared by the Central Government to be assisting the country committing such aggression;

(iv) any person belonging to such other country;

(b) "goods" means any materials, commodities or articles and includes materials, commodities or articles used in or for the construction of any ship up to the time at which the ship after construction is launched;

(c) "Scheme" means the Emergency Risks (Goods) Insurance Scheme made under this Act;

(d) "seller of goods" includes a seller of goods acting as an agent;

(e) "supplier of goods" means a person carrying on a business in the course of which he supplies goods for the purpose of, or in pursuance of, contracts made by him for work, labour and materials;

(f) "emergency risks" means such risks arising from—

(i) action taken by an enemy or action taken in combating an enemy or in repelling an imagined attack by an enemy;

(ii) any explosion or fire which involves explosives or munitions or other dangerous things required for the purposes of defence against any action of an enemy and which happens or is caused by, through, or in connection with, the manufacture, storage or transportation of any such explosives, munitions or other dangerous things;

(iii) measures taken under proper authority to avoid the spreading of, or otherwise to mitigate, the consequences of damage occurring (whether accidentally or not) as a direct result of any such action as is described in sub-clause (i) or of any such explosion or fire as is described in sub-clause (ii);

(iv) precautionary or preparatory measures taken under proper authority with a view to preventing or hindering the carrying out of any attack by an enemy, being measures involving a substantial degree of risk to property;

(v) precautionary or preparatory measures involving the doing of work on land and taken under proper authority in any way in anticipation of enemy action, being measures involving a substantial degree of risk to property;

(vi) precautionary or preparatory measures taken under proper authority with a view to denying facilities to an enemy, being measures involving a substantial degree of damage to or diminution of value of property.

CHAPTER II

INSURABLE GOODS AND INSURANCE SCHEME

Goods insurable under the Act.

3. (1) Subject to the provisions of this section, the following goods shall, in relation to any person carrying on business in India as a seller or supplier of goods of any description, be deemed to be goods insurable under this Act, that is to say, all goods situated in India or, consigned from one place in India to another place in India and in transit, being either—

(i) goods of that description, or

(ii) goods used as material from which goods of that description are produced or as ingredients or component parts of goods of that description:

Provided that no goods shall be deemed to be insurable under this Act—

(a) in relation to any person, being the owner of the goods, who carries on business as a seller of goods, unless they are owned by him with a view to being sold, or to being used as material for the production of goods to be sold, or as ingredients or component parts of goods to be sold;

(b) in relation to any person, being the owner of the goods, who carries on business as a supplier of goods, unless they are owned by him with a view to being supplied for the purpose of, or in pursuance of, a contract made by him for work, labour and materials or to being used as material for the production of goods to be supplied as aforesaid, or as ingredients or component parts of goods to be supplied.

(2) The Central Government may, by notification in the Official Gazette, direct that goods of any description specified in the notification shall, notwithstanding anything contained in this section, be deemed not to be goods insurable under this Act.

(3) Nothing in sub-section (1) shall apply in relation to goods which are owned by Government or in respect of which the Government is the seller or supplier.

4. (1) Save in so far as is otherwise expressly provided in this Ownership Act, any goods, shall, subject to the provisions of this section, be deemed for the purposes of this Act to be owned,—

(a) if the property in the goods is for the time being vested in a person in relation to whom they are insurable under this Act, by that person;

(b) if the property in the goods is not so vested, by any person in relation to whom the goods are insurable under this Act and who is for the time being entitled, either unconditionally or conditionally, to have the property in the goods vested in him:—

Provided that where—

(i) any goods would, under the foregoing provisions of this section, be deemed to be owned by a person in whom the property therein is vested otherwise than in the course of a business carried on by him in India, or who is entitled to have the property therein vested in him otherwise than in the course of such a business, and

(ii) any person carrying on business in India is for the time being entitled to sell the goods as agent,

the goods shall be deemed to be owned by the last mentioned person.

(2) Where in the course of any business a ship is being, or has been, constructed under contract, and the ship or any part thereof or any goods appropriated for the construction thereof—

(a) would, apart from the provisions of this sub-section, have been deemed for the purposes of this Act to be owned at any time by the person from time to time carrying on the business, or

(b) have at any time been accepted, in pursuance of a contract made with him, by the person from time to time carrying on the business,

then, notwithstanding that they would not, apart from the said provisions, be deemed for the said purposes to be owned by the person

from time to time carrying on the business, the ship and any part thereof and any goods so appropriated as aforesaid shall, subject to the provisions of sub-section (3), be deemed, in a case to which clause (a) of this sub-section applies, to continue to be owned by the person from time to time carrying on the business until the acceptance of the ship, in pursuance of the contract in question, by the person for whom it is being or has been, constructed, and in a case to which clause (b) of this sub-section applies, to be owned by the person from time to time carrying on the business at all times between the acceptance referred to in the said clause (b) and the acceptance of the ship as aforesaid by the person for whom it is being, or has been, constructed.

(3) The provisions of sub-section (2) shall apply in relation to the construction under contract in the course of a business of part of a ship, not being part of a ship which is being, or has been, constructed by the person from time to time carrying on the business, as they apply in relation to the construction of a ship—

(a) with the substitution for references to a ship of references to part of a ship;

(b) where the contract for the part of the ship is with the person for whom the ship is being constructed, with the substitution for references to the acceptance of the ship under the contract in question of references to the acceptance of the ship under the contract for the construction thereof;

(c) where the contract for the part of the ship is with any other person, with the substitution for references to the acceptance of the ship under the contract in question of references to the acceptance of the part of the ship under the contract for the construction of the part by the person for whom it is being, or has been, constructed.

(4) Where the person from time to time carrying on a business receives any money, under a policy issued in pursuance of the Scheme, in respect of the loss of or damage to a ship, part of a ship or goods which are deemed to be owned by him by virtue of sub-section (2) or sub-section (3), the money shall be held by him on trust for the person who, apart from the provisions of those sub-sections, would be deemed for the purposes of this Act to be the owner of the ship, part or goods, subject, however, to any lien or charge which would otherwise be enforceable against the ship, part or goods and subject also to the right to retain out of the money the amount of any expenses reasonably incurred by the first mentioned person in making good any part of the loss or damage which he is liable to make good.

5. (1) The Central Government may, by notification in the Official Gazette, put into operation a scheme to be called the **Emergency Risks (Goods) Insurance Scheme**, whereby the Central Government undertakes in relation to persons carrying on business in India as sellers or suppliers of goods, the liability of insurance of such persons against emergency risks, to the extent provided by or under this Act, in respect of goods insurable under this Act which are from time to time owned by such persons in the course of such business.

(2) The Scheme may also extend—

(a) to the undertaking by the Central Government, in relation to any person carrying on business in India as seller or supplier of goods, of the liability of insuring such a person against emergency risks in respect of goods insurable under this Act which are not owned by him but in which he has an interest arising in the course of that business;

(b) without prejudice to the provisions of clause (a) of this sub-section, to the undertaking by the Central Government, in relation to a person carrying on any business in India, of the liability of insuring such a person against emergency risks in respect of—

(i) any goods situated in India which are in his possession, otherwise than under a hire purchase agreement, for the purposes of that business,

(ii) any goods situated in India which are subject to a mortgage, pledge or charge in his favour held by him in the course of that business,

being in either case goods which are not owned by him but which are insurable under this Act in relation to the person by whom they are owned;

(c) to the undertaking by the Central Government, in relation to a person carrying on any business in India, of the liability of insuring such person against emergency risks in respect of any goods situated in India, which having been sold in India, for export from India, are in his possession for the purpose of such export and are goods which were prior to such sale insurable under this Act in relation to the person by whom they were then owned;

(d) to the undertaking by the Central Government, in relation to any person carrying on any business in India as a seller or supplier of goods, of the liability of insuring such a person against emergency risks in respect of goods imported into India through any port of India, while such goods are situated at such port or are in transit to a place in India.

(3) The Scheme shall be such as to secure—

(a) that the liability of the Central Government as insurer shall not extend to more than eighty per cent. of the insurable value of the property insurable;

(b) that any liability of the Central Government as insurer under the Scheme is determined by a policy of insurance issued, in the form and in respect of a period not exceeding the period specified in the Scheme, by a person acting on behalf of the Central Government:

Provided that the form of policy may be such as to limit the extent and nature of the indemnity provided by the Central Government and to impose conditions subject to which the indemnity is provided;

(c) that any premium under a policy so issued is payable at such rate as may, for the time being, be specified in the Scheme; and

(d) that the amount of any one premium payable under a policy so issued is not less than such sum as may be specified in the Scheme.

(4) Different forms of policies may be specified under sub-section (3) in relation to different descriptions of goods.

(5) The Central Government may, by notification in the Official Gazette, add to, amend or vary any Scheme made under this Act.

Employment
of agents by
Central Gov-
ernment.

6. The Central Government may, by notification in the Official Gazette, employ or authorise the employment of any person to act as its agent for any of the purposes of this Act and may pay to the person so employed such remuneration as it may think fit.

CHAPTER III

COMPULSORY INSURANCE

Power to
make insur-
ance com-
pulsory.

7. (1) While the Scheme is in operation, no person shall, after such date as may be specified in this behalf by the Central Government by notification in the Official Gazette, carry on any business in India as a seller or supplier of goods, unless, in respect of any goods insurable under this Act which are for the time being owned by him in the course of that business, there is in force a policy of insurance against emergency risks issued in accordance with the Scheme,

whereby he is insured in respect of such goods for a sum not less than the value thereof for the time being:

Provided that the Scheme shall not restrict the carrying on of business as aforesaid by any person, if and so long as the value of all goods insurable under this Act which are for the time being owned by him within one and the same Presidency town or district in the course of that business does not exceed fifty thousand rupees.

(2) Whoever contravenes the provisions of this section shall be punishable with fine which may extend to one thousand rupees and with further fine which may extend to five hundred rupees for every day after the first on which the contravention continues.

8. (1) Without prejudice to the provisions of sub-section (2) of section 7, where any person has failed to insure as, or to the full amount, required by this Act, and has thereby evaded the payment by way of premium of any money which he would have had to pay but for such failure, an officer authorised in this behalf by the Central Government may determine the amount payment of which has been so evaded and the amount so determined shall be payable by such person and shall be recoverable from him as an arrear of land revenue and shall be a first charge on the goods in respect of which the default was made.

Omission to insure or to insure up to the full amount.

(2) A person against whom a determination is made under sub-section (1) may, within the period specified in the Scheme, appeal against such determination to the Central Government whose decision thereon shall be final.

9. (1) After the date on which the Scheme is put into operation, no person shall, except as a person authorised by the Central Government as its agent to issue policies in pursuance of the Scheme, carry on any business of insuring persons carrying on business in India as sellers or suppliers of goods against emergency risks in respect of goods insurable under this Act which are from time to time owned by such persons in the course of such business as is last mentioned.

Restrictions on carrying on of certain insurance business.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to five thousand rupees and with further fine which may extend to one thousand rupees for every day after the first on which the contravention continues.

Emergency
Risks (Goods)
Insurance
Fund.

10. (1) The Central Government may, after due appropriation made by Parliament by law in this behalf, transfer in each financial year to a fund to be called the Emergency Risks (Goods) Insurance Fund (hereinafter referred to as the "Fund") such sums, as may be considered necessary, not exceeding the sums received by the Central Government by way of insurance premiums under the Scheme, or by way of payments made on composition of offences under section 15 or by way of expenses or compensation awarded by a court, under section 545 of the Code of Criminal Procedure, 1898, out of any fine imposed in any prosecution under this Act.

(2) There shall be paid from out of the Fund all sums required for the discharge by the Central Government of any of its liabilities under the Scheme or for the payment by the Central Government of the remuneration and expenses of agents employed for the purposes of the Scheme.

(3) If at any time when a payment is to be made out of the Fund, the sum standing to the credit of the Fund is less than the sum required for the making of that payment, an amount equal to the deficiency shall, after due appropriation made by Parliament by law, be paid into the Fund as an advance out of the Consolidated Fund of India.

(4) If at any time the amount standing to the credit of the Fund exceeds the sum which, in the opinion of the Central Government, is likely to be required for the making of payments out of the Fund, the excess shall be disposed of in such manner as the Central Government may think fit.

(5) The Central Government shall prepare, in such form and manner as may be specified in the Scheme and shall publish either annually or at such shorter intervals as may be specified therein, an account of all sums received into and paid out of the Fund.

CHAPTER IV

MISCELLANEOUS

Power of
Central Gov-
ernment to
obtain infor-
mation.

11. (1) Any person authorised in this behalf by the Central Government may, for the purposes of ascertaining whether or not the requirements of this Act have been complied with,—

(a) require any person carrying on in India the business of fire insurance or of a seller or supplier of goods to submit to him such accounts, books or other documents or to furnish to him such information as he may reasonably think necessary, or

(b) at any reasonable time, enter any premises occupied by any person carrying on in India the business of a seller or supplier of goods for the purposes of that business and may inspect the premises and require any person found therein who is for the time being in charge thereof, or in control of the business carried on therein, to produce to him and allow him to examine such accounts, books or other documents as may relate to the business carried on in the premises and to furnish to him such other information as he may reasonably require for the purpose of ascertaining whether or not, and, if so, to what extent, the person carrying on the business is insured under the Scheme in respect of goods owned by him in the course of that business, and of ascertaining the value of any goods insurable under the Scheme which are, or were at any relevant time, owned by him in the course of that business and the maximum amount which would be recoverable in respect of any such goods under a policy issued under this Act.

(2) Whoever wilfully obstructs any person in the exercise of his powers under this section or fails without any reasonable excuse to comply with a demand made thereunder, shall, in respect of each occasion on which any such obstruction or failure takes place, be punishable with fine which may extend to five hundred rupees.

(3) Whoever, in purporting to comply with his obligations under this section, knowingly or recklessly makes a statement false in a material particular, shall be punishable with fine which may extend to one thousand rupees.

(4) Where in any proceedings in respect of a contravention of section 7 in relation to any business, it is proved, in relation to that business—

(a) that a demand for the production of a policy of insurance issued in accordance with the Scheme insuring the person carrying on the business was duly made under this section and was not complied with, and

(b) that the person making the demand was not satisfied that there was such a policy in existence,

it shall be presumed, except in so far as the contrary is proved, that the said section 7 was being contravened in relation to that business at the time when the demand was made and continued to be contravened in relation to that business at all times thereafter.

Punishment
for giving
false infor-
mation.

12. If any person, for the purpose of obtaining for himself or any other person any payment in respect of any damage due to the action of the enemy or under a policy issued in pursuance of the Scheme,—

(a) furnishes any information which he knows to be false in a material particular, or recklessly furnishes any information which is false in a material particular; or

(b) with intent to deceive, produces, furnishes, sends or otherwise makes use of any book, account or other document which is false in a material particular, or

(c) with intent to deceive, withholds any material information,

he shall be punishable with fine which may extend to five thousand rupees, or with imprisonment for a term not exceeding three months, or with both.

Refund of
premiums in
certain cases.

13. (1) Where goods of any description have been insured by a seller or supplier of goods for any period, and before that period has elapsed the goods of that description have ceased, by virtue of a notification under sub-section (2) of section 3 to be goods insurable under this Act, the person who has insured such goods shall be entitled to a proportionate refund of the premium.

(2) No suit shall be maintainable in any civil court against the Central Government or any person acting as the agent of the Central Government under section 6 for the refund of money paid or purporting to have been paid as premium in respect of any policy issued or purporting to have been issued under this Act.

Limitation
on prosecution.

14. No prosecution for any offence punishable under this Act shall be instituted against any person except by, or with the consent of, the Central Government or an authority authorised in this behalf by the Central Government.

Composition
of offences.

15. Any offence punishable under sub-section (2) of section 7, or sub-section (2) of section 9 may, either before or after the institution of the prosecution, be compounded by the Central Government or by any authority authorised in this behalf by the Central Government, on payment for credit to the Fund of such sum as the Central Government or such authority, as the case may be, thinks fit.

Bar of legal
proceedings.

16. No suit, prosecution, or other legal proceedings shall lie against the Central Government or against any person for anything which is in good faith done or intended to be done under this Act.

17. If any difficulty arises in giving effect to the provisions of this Act, and in particular, if any doubt arises as to whether a person is insurable in respect of any goods under this Act, the Central Government may, by order, make such provision or give such direction, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for the removal of the doubt or difficulty; and the order of the Central Government, in such cases, shall be final.

Power to re-
move diffi-
culties.

STATEMENT OF OBJECTS AND REASONS

In view of the present emergency, it is considered desirable that provision should be made for the insurance of goods against the risk of loss or damage as a result of enemy action. As the degree of risk which may be involved is necessarily uncertain, it will not be possible for the established insurers to cover it in the normal course, and the scheme will have to be formulated, brought into force and operated on behalf of the Central Government.

2. The Bill seeks to provide for a scheme of insurance based on premium rates which can be varied within certain limits with reference to the actual nature or extent of the risk as it may exist from time to time. The various provisions are explained in detail in the notes on clauses which are attached to the Bill.

MORARJI DESAI.

NEW DELHI;

The 29th November, 1962.

Notes on clauses

Clause 1, in effect, provides that the Bill, when it is passed into law, shall come into force immediately in all the States or territories of India including Jammu and Kashmir. The provisions of the Act will continue to be in force throughout the period of the present emergency and for a reasonable period thereafter.

Clause 2 defines the words and expressions used in the Bill. The definition of "enemy" in sub-clause (a) is based on the corresponding definition in the Defence of India Bill, 1962. The definition of "emergency risks" is based mainly on the provisions of the previous law as it was in force during the second world war, and includes damages caused by explosions or by the adoption of "scorched earth" "denial" policies.

Clause 3 makes it clear that the property insurable under the provisions of the Bill will be goods held in India for purposes of sale in the course of business, but provides that goods which are in transit from any place in India to any other place in India will, throughout the period of such transit, be insurable in accordance with the provisions of the Bill.

Goods belonging to or sold or supplied by Government will not be insurable. Sub-clause (2) also provides that goods which are not normally insurable or which were not insured for similar risks during the last war may be excluded from the list of goods insurable under the Scheme.

Clause 4 provides for the ownership of goods, and consequently for the liability or obligations in regard to them to be determined in the event of doubt. The intention is that if there is any difficulty about determining the question whether goods have vested in any person at the time of insurance, the real owner, or his agent if such an agent is entitled to sell the goods, should be the person entitled to the rights or liable for the obligations, as the case may be, under the various provisions of the Bill.

Clause 5 provides for a scheme of insurance of goods, within the scope of the provisions of the Bill, to be prepared and brought into force by notification at an appropriate stage by the Central Government. It is clarified for the avoidance of any doubt that persons

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interested in, or entitled to the possession of, any insurable goods in the course of their business, or persons to whom any insurable goods have been pledged, mortgaged, hypothecated or otherwise charged, may insure the goods, on their initiative, in lieu of the persons who as the presumed owners for the purposes of the Scheme may be bound or compelled to insure the goods in the normal course.

Goods which are in the process of being exported from, or imported into, India will be insurable at the stages at which and for the periods for which they are, or become, situated in India.

The Central Government's liability as the insurer under the scheme will be limited in each case to eighty per cent. of the insurable value of the goods. The policies of insurance will be issued for comparatively short periods, the duration of which will be determined by the Central Government, but the periods of validity will be extended from time to time. The premiums will be charged at a variable rate, which will be determined from time to time by the Central Government after taking into account the actual degree of risk which may be involved.

Goods will normally be insurable under the Scheme only if the risk of loss or damage is considerable *vide* the notes under clause 7.

Clause 6 provides for the appointment of an agent to administer the scheme on behalf of the Central Government.

Clauses 7 and 8.—Clause 7 provides that when a scheme of insurance is notified and brought into force, every person who in the course of his business is a seller of goods will be compelled to insure such goods to the extent that they are insurable under the scheme. Clause 8 provides for the determination and recovery of any payment due to be paid to the Central Government on this account if it has been evaded or is in arrears.

Goods, which being located in any district are of the value of Rs. 50,000 or less, are not compulsorily insurable in accordance with the provisions of the Scheme.

Clause 9 prohibits private insurers from competing with the Central Government in regard to the coverage of the abnormal emergency risks for which provision is made in the Bill.

Clause 10 provides for the establishment of an Emergency Risks (Goods) Insurance Fund. The fund is intended to be self-sufficient, but provision is being made for the Central Government to advance to the fund, if it is temporarily in deficit, any amount which may

be needed for meeting the expenditure which may be chargeable to the fund. If there is ultimately a surplus in the fund, after provision has been made for all the obligations to the policy-holders, appropriate arrangements in regard to the utilisation of the surplus will be made by the Central Government.

Clauses 11 and 12.—Clause 11 provides for the grant of power to the Central Government to obtain information or to carry out such inspections as may be necessary, and Clause 12 provides for penalties for furnishing any false information.

Clause 13 provides for the refund of premiums in the case of goods which are insurable under the provisions of the Bill at the time that a policy of insurance is issued but which are subsequently excluded during the currency of the insurance policy from the scope of the insurance scheme.

Clauses 14 to 17 contain the usual provisions in regard to the limitation of prosecutions, the composition of offences, bar of legal proceedings in respect of action taken in good faith, and power to remove difficulties, if any.

FINANCIAL MEMORANDUM

Clause 10 of the bill provides that an Emergency Risks (Goods) Insurance Fund will be established and that an amount not exceeding the amount of the premiums collected under the scheme of insurance will be paid into that fund after due appropriation by law. The degree of risk as a result of enemy action is necessarily uncertain and a reasonably accurate estimate of the value of the property insurable in accordance with the provisions of the Bill is not also available. It is not possible, therefore, to anticipate exactly at this stage the rate at which premiums may have to be fixed or the amounts receivable on account of the Emergency Risks (Goods) Insurance Fund. It is envisaged, however, that the rate of premium may not exceed three fourths of one per cent. of the insurable value per quarter, to begin with. It is also expected that the scheme may not involve any net burden on the Consolidated Fund of India over and above the obligation to transfer to the Emergency Risks (Goods) Insurance Fund from out of the Consolidated Fund the premiums received under the scheme.

The cost of administering the scheme is expected to amount to about Rs. 1·5 lakhs on account of the special officer's organisation.

MEMORANDUM ON DELEGATED LEGISLATION

Sub-clause (3) of clause (1) provides that the Central Government may by notification in the Official Gazette declare that the period of the emergency for the purposes of the Emergency Risks (Goods) Insurance Scheme will be extended until some suitable date after the expiry of the emergency which has been proclaimed by the President under Article 352 of the Constitution. The delegation of power to the Central Government for this purpose is unavoidable.

2. There is no other provision in the Bill which involves any delegation of powers which is not of a routine or normal character.

*BILL No. 122 OF 1962

A Bill to provide for the establishment of a Corporation for granting medium and long term credit by way of refinance or otherwise, for the development of agriculture and for other matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Thirteenth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Agricultural Refinance Corpora- 5
tion Act, 1962.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Govern-
ment may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,— 10

(a) "agriculture" includes animal husbandry, dairy farming,
pisciculture, poultry farming and stock breeding;

(b) "Board" means the Board of directors of the Corporation;

(c) "central land mortgage bank" means the principal land
mortgage bank in a State which is registered, or deemed to be 15
registered, under the Co-operative Societies Act, 1912 or any other 2 of 1912.

*The President has, in pursuance of clauses (1) and (3) of article 117 and clause (1) of article 274 of the Constitution of India recommended to Lok Sabha the introduction and consideration of the Bill.

law for the time being in force in any State relating to co-operative societies and the primary object of which is the providing of long term finance for agricultural development:

5 Provided that in addition to such principal land mortgage bank in a State or where there is no such bank in a State, the State Government may, with the previous approval of the Reserve Bank, declare any one or more land mortgage banks registered or deemed to be registered as aforesaid and carrying on the business of providing long term finances for agricultural development in that State to be a central land mortgage bank or
10 banks within the meaning of this definition;

2 of 1912.

(d) "co-operative society" means a society registered, or deemed to be registered, under the Co-operative Societies Act, 1912 or any other law for the time being in force in any State relating to co-operative societies;
15

(e) "Corporation" means the Agricultural Refinance Corporation established under this Act;

(f) "eligible institution" means—

(i) a central land mortgage bank or a State co-operative bank or a scheduled bank, being in each case a shareholder of the Corporation; and
20

(ii) a co-operative society (other than a central land mortgage bank or a State co-operative bank) approved by the Reserve Bank in this behalf;

31 of 1956.

(g) "Life Insurance Corporation" means the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956;
25

(h) "prescribed" means prescribed by regulations made under this Act;

or 1934.

(i) "Reserve Bank" means the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934;
30

(j) "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934; and

(k) "State co-operative bank" has the same meaning as in the Reserve Bank of India Act, 1934.
35

CHAPTER II

ESTABLISHMENT AND CAPITAL OF THE AGRICULTURAL REFINANCE CORPORATION

Establishment and incorporation of Agricultural Refinance Corporation. 3. (1) With effect from such date as the Central Government may by notification in the Official Gazette appoint, there shall be established for the purposes of this Act a Corporation to be known as the Agricultural Refinance Corporation. 5

(2) The Corporation shall be a body corporate with the name aforesaid, having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of 10 property, and to contract, and may by that name sue and be sued.

Offices and agencies. 4. The Corporation shall establish its head office in Bombay and may, with the previous approval of the Reserve Bank, establish offices or agencies in other places in India.

Share capital and shareholders. 5. (1) The authorised capital of the Corporation shall be twenty- 15 five crores of rupees divided into twenty-five thousand fully paid-up shares of ten thousand rupees each of which five thousand shares of the total value of five crores of rupees shall be issued in the first instance, and the remaining shares may, with the sanction of the Central Government, be issued from time to time by the Corporation 20 as and when the Corporation may deem fit.

(2) Of the capital issued in the first instance and before such date as may be notified by the Central Government in the Official Gazette in this behalf—

(a) the Reserve Bank shall subscribe for two thousand five hundred shares;

(b) central land mortgage banks and State co-operative banks may subscribe for one thousand five hundred shares;

(c) scheduled banks, the Life Insurance Corporation, insurance and investment companies and such other classes of financial 30 institutions as may be notified by the Central Government in the Official Gazette in this behalf may subscribe for one thousand shares.

(3) The allotment of shares to the institutions mentioned in clauses (b) and (c) of sub-section (2) shall be made by the Board in accordance with the regulations made in this behalf: 35

Provided that no such institution shall be allotted more than ten per cent. of the shares reserved for the class of institutions to which it belongs.

(4) If any shares referred to in clauses (b) and (c) of sub-section (2) remain unallotted, they shall be subscribed for by the Reserve Bank:

5 Provided that the Reserve Bank may dispose of the shares subscribed for by it in pursuance of this sub-section, to any institution mentioned in clauses (b) and (c) of sub-section (2), so however that---

10 (i) the institutions referred to in the said clause (b) shall not together hold more than one thousand five hundred shares, and the institutions referred to in the said clause (c) shall not together hold more than one thousand shares, and

(ii) no institution shall hold more than ten per cent. of the shares reserved for the class of institutions to which it belongs.

15 (5) If and when the remaining shares or any part thereof are issued, the Reserve Bank shall, and the institutions referred to in clauses (b) and (c) of sub-section (2) may, subscribe for such shares in the same proportion as for the first issue and the provisions of sub-sections (3) and (4), except clause (ii) of the proviso to sub-section (4), shall also apply to such shares.

20 (6) Shares of the Corporation shall not be transferable except---

(a) to the institutions specified in clauses (a), (b) and (c) of sub-section (2), and

(b) in accordance with the regulations made in this behalf.

25 6. Shares of the Corporation shall be guaranteed by the Central Government as to the repayment of the principal and the payment of a minimum annual dividend at such rate as may be fixed by the Central Government by notification in the Official Gazette at the time of issuing the shares.

Guarantee
by Central
Government.

30 7. Notwithstanding anything contained in the Acts hereinafter mentioned in this section, the shares of the Corporation shall be deemed to be included among the securities enumerated in section 20 of the Indian Trusts Act, 1882, and be also deemed to be approved securities for the purposes of the Insurance Act, 1938 and the Banking Companies Act, 1949.

Shares of
Corporation
to be
deemed to
be securities
for certain
purposes.

12 of 1882.

4 of 1938

10 of 1949.

Register of
shareholders.

8. (1) The Corporation shall maintain as its head office a register of the shareholders and shall enter therein the following particulars so far as they may be available, namely:—

(i) the names and addresses of the shareholders and a statement of the shares held by each shareholder, distinguishing each share by its denoting number; 5

(ii) the date on which each person is entered as a shareholder;

(iii) the date on which any person ceases to be a shareholder; and 10

(iv) such other particulars as may be prescribed.

(2) Notwithstanding anything contained in this Act or in any other law for the time being in force, no notice of any trust, express, implied or constructive, shall be entered on the register maintained under sub-section (1) or be receivable by the Corporation. 15

CHAPTER III

MANAGEMENT OF THE CORPORATION

Manage-
ment.

9. (1) The general superintendence, direction and management of the affairs and business of the Corporation shall vest in a Board of directors which may exercise all such powers and do all such acts and things as may be exercised or done by the Corporation. 20

(2) The Board, in discharging its functions, shall act on business principles with due regard to public interest.

Board of
directors.

10. The Board of directors shall consist of the following, namely:—

(a) a Deputy Governor of the Reserve Bank nominated by that Bank, who shall be the Chairman of the Board; 25

(b) a director nominated by the Reserve Bank;

(c) three officers of the Central Government nominated by that Government;

(d) one director elected in the prescribed manner by such of the central land mortgage banks as are shareholders of the Corporation; 30

(e) one director elected in the prescribed manner by such of the State co-operative banks as are shareholders of the Corporation;

5 (f) one director elected in the prescribed manner by the Life Insurance Corporation, scheduled banks, insurance and investment companies and other financial institutions, which are shareholders of the Corporation; and

10 (g) a managing director to be appointed by the Reserve Bank and, except in the case of the first appointment, after consultation with the Board:

15 Provided that on the first constitution of the Board, the directors referred to in clauses (d), (e) and (f) shall be nominated by the Central Government and the directors so nominated shall, for the purposes of this Act, be deemed to be elected directors:

Provided further that the directors so nominated shall hold office until the conclusion of the first annual general meeting of the Corporation.

20 11. (1) A nominated director shall hold office during the pleasure of the authority nominating him.

Term of office and retirement of directors and payment of fees to them.

(2) An elected director, other than a director deemed to be elected under the first proviso to section 10, shall hold office for four years:

25 Provided that an elected director shall continue in office until his successor has been elected and shall also be eligible for re-election but shall not hold office for more than two consecutive terms.

(3) A casual vacancy in the office of an elected director shall be filled by election and a director so elected shall hold office for the unexpired portion of the term of his predecessor:

30 Provided that no casual vacancy occurring within three months of the date of expiry of the normal term of office of an elected director need be filled under this sub-section.

35 (4) Directors shall be paid such fees and allowances as may be prescribed for attending the meetings of the Board or of any of its committees and for attending to any other work of the Corporation:

Provided that no fees shall be payable to the Chairman, managing director or to any other director who is an officer of the Government or of the Reserve Bank.

**Disqualifi-
cations.**

12. No person shall be a director who—

(a) except in the case of the managing director, is a salaried official of the Corporation; or

(b) is, or at any time has been, adjudicated insolvent or has suspended payment of his debts or has compounded with his creditors; or

(c) is of unsound mind and stands so declared by a competent court; or

(d) is or has been convicted of any offence which, in the opinion of the Central Government, involves moral turpitude.

**Vacation and
resignation
of office by
directors.**

13. (1) If a director—

(a) becomes subject to any of the disqualifications mentioned in section 12; or

(b) is absent without leave of the Board from more than three consecutive meetings thereof,

his seat shall thereupon become vacant.

(2) Any director elected under clause (d), or clause (e) or clause (f) of section 10 may resign his office by giving notice thereof in writing to the Board and, on such resignation being accepted, shall be deemed to have vacated his office.

**Managing
director.**

14. (1) The managing director shall—

(a) be a whole-time officer of the Corporation;

(b) perform such duties as the Board may entrust or delegate to him;

(c) hold office for such term not exceeding five years as the Reserve Bank may at the time of appointment specify and be eligible for re-appointment; and

(d) receive such salary and allowances and be governed by such terms and conditions of service as the Board, with the previous approval of the Reserve Bank, may determine:

Provided that the first managing director shall receive such salary and allowances and be governed by such terms and conditions of service as the Reserve Bank may determine.

(2) The Reserve Bank may at any time, after consultation with the Board, remove the managing director from office.

15 15. If the managing director is by infirmity or otherwise rendered incapable of carrying out his duties or is absent on leave or otherwise, in circumstances not involving the vacation of his appointment, the Reserve Bank may, after consultation with the Board, appoint another person to act in his place during his absence. Casual vacancies in the office of managing director.

10 16. (1) The Board shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed. Meetings of Board.

(2) The Chairman, or, if for any reason he is unable to attend any meeting, any other director elected by the directors present at the meeting shall preside at the meeting of the Board.

15 (3) All questions which come up before any meeting of the Board shall be decided by a majority of votes of the members present and voting, and, in the event of an equality of votes, the Chairman or, in his absence, the person presiding, shall have a second or casting vote.

20 17. (1) The Board may constitute an Executive Committee consisting of such number of directors as may be prescribed. Committees of Corporation.

(2) The Executive Committee shall discharge such functions as may be prescribed or may be delegated to it by the Board.

25 (3) The Board may constitute such other committees, whether consisting wholly of directors or wholly of other persons or partly of directors and partly of other persons as it thinks fit and for such purposes as it may decide.

30 (4) A committee constituted under this section shall meet at such times and places and shall observe such rules and procedure in regard to the transaction of business of its meetings as may be prescribed.

(5) The members of a committee (other than the directors of the Board), shall be paid by the Corporation such fees and allowances as may be prescribed for attending its meetings and for attending to any other work of the Corporation.

Member of
Board or
Committee
the or of not
to vote in
certain
cases.

18. A director of the Board or a member of a committee who has any direct or indirect pecuniary interest in any matter coming up for consideration at a meeting of the Board or a committee thereof, shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and the disclosure shall be recorded in the minutes of the Board or the committee, as the case may be, and the director or member shall not take any part in any deliberation or decision of the Board or the committee with respect to that matter. 5

CHAPTER IV

10

FUNDS AND BUSINESS OF THE CORPORATION

Central Go-
vernment to
make a loan
of five
crores of
rupees.

19. The Central Government shall, after due appropriation made by Parliament by law in this behalf, make to the Corporation an interest-free loan of five crores of rupees, repayable in fifteen equal annual instalments commencing on the expiry of a period of fifteen years from the date of receipt of the loan: 15

Provided that the Central Government may, on a request being made to it by the Corporation, increase the number of instalments or alter the amount of any instalment or vary the date on which any instalment is payable. 20

Borrowings
by Cor-
poration.

20. (1) The Corporation may, for the purpose of carrying out its functions under this Act, with the previous approval of the Central Government—

(a) issue and sell bonds and debentures carrying interest, which bonds and debentures shall be guaranteed by the Central Government as to the repayment of principal and payment of interest at such rates as may be fixed by the Central Government at the time the bonds or debentures are issued; 25

(b) borrow money from the Reserve Bank repayable on the expiry of fixed periods not exceeding eighteen months from the date of the making of the loan or advance, against the security of stocks, funds and securities (other than immovable property) in which a trustee is authorised to invest trust money by any law for the time being in force in India; 30

(c) borrow money from the Central Government and from any other authority or organisation or institution approved by that Government, on such terms and conditions as may be agreed upon; and 35

(d) accept from the Central Government, a State Government, a local authority, a central land mortgage bank, a State 40

co-operative bank, a scheduled bank or any person, deposits repayable after the expiry of a period which shall not be less than twelve months from the date of the making of the deposit and on such other terms as the Corporation may, with the prior approval of the Reserve Bank, fix.

(2) The amount of loan granted by the Central Government under section 19 and outstanding, together with the amount of bonds and debentures issued under clause (a) of sub-section (1) and outstanding, the amounts borrowed by the Corporation and outstanding under clauses (b) and (c) of that sub-section and the amount of deposits accepted under clause (d) of that sub-section, shall not at any time in the aggregate exceed twenty times the amount of the paid-up share capital and the reserve fund of the Corporation.

21. (1) Notwithstanding anything contained in the Foreign Exchange Regulation Act, 1947, or in any other law for the time being in force relating to foreign exchange, the Corporation may, for the purpose of granting loans and advances to eligible institutions, borrow, with the previous consent of the Central Government, foreign currency from any bank or financial institution in India or elsewhere.

(2) The Central Government may guarantee loans taken by the Corporation under sub-section (1) as to the repayment of principal and the payment of interest thereon and other incidental charges.

(3) All loans and advances made to eligible institutions out of foreign currency borrowed under sub-section (1) shall be granted in Indian currency and shall be repayable by such institutions in Indian currency.

(4) Any loss occurring or profit accruing in connection with any borrowing of foreign currency under sub-section (1) for the purpose of granting loans or advances to any eligible institution or its repayment, on account of any fluctuations in the rates of exchange shall be reimbursed by, or paid to, the eligible institution.

22. (1) The Corporation may provide such financial assistance to eligible institutions as it considers necessary for promoting the development of agriculture in India and shall not—

(a) transact any business except for that purpose, and

Loans in
foreign
currency.

Business
which the
Corporation
may trans-
act.

(b) grant, except as hereinafter provided, loans and advances otherwise than by way of refinance:

(2) No institution other than an eligible institution shall be entitled to assistance under sub-section (1).

(3) Subject to the provisions of sub-sections (1) and (2), the Corporation may transact the several kinds of business hereinafter specified, namely:—

(a) the granting of loans and advances by way of refinance to an eligible institution mentioned in sub-clause (i) of clause (f) of section 2, repayable within a period not exceeding twenty- 10 five years from the dates on which they are granted;

(b) the granting of loans and advances otherwise than by way of refinance to an eligible institution mentioned in sub-clause (ii) of clause (f) of section 2 repayable within a period not exceeding twenty-five years from the dates on which they are 15 granted;

(c) the subscribing to the debentures of any eligible institution repayable within a period not exceeding twenty-five years from the dates on which they are issued:

Provided that repayment of principal and payment of in- 20 terest thereon are fully and unconditionally guaranteed by Government;

(d) the guaranteeing, with the prior approval of the Central Government and on such terms and conditions as may be agreed upon, of deferred payments in connection with the pur- 25 chase of capital goods from outside India,

(i) due from an eligible institution mentioned in sub-clause (ii) of clause (f) of section 2; or

(ii) due from any other person and guaranteed to the Corporation by one of the eligible institutions mentioned in 30 sub-clause (i) of clause (f) of section 2;

(e) acting as agent for the Central Government or a State Government in the transaction of any business with an eligible institution in respect of loans and advances granted or to be

granted, or debentures subscribed for or to be subscribed for, by such Government; and

(f) generally, the doing of all such matters and things as may be incidental to or consequential upon the discharge of its functions under this Act.

(4) No accommodation shall be granted under clauses (a), (b) and (d) of sub-section (3) to an eligible institution unless it is fully and unconditionally guaranteed as to the repayment of principal and payment of interest by Government:

10 Provided that no such guarantee shall be required in cases in which an eligible institution makes available other security to the satisfaction of the Board:

15 Provided further that any sums received by a scheduled bank in repayment or realisation of loans and advances refinanced either wholly or partly by the Corporation shall, to the extent of the accommodation granted by the Corporation remaining outstanding, be deemed to have been received by the scheduled bank in trust for the Corporation, and shall accordingly be paid by such scheduled bank to the Corporation.

20 (5) The Corporation shall not grant any loan or advance on the security of its own shares, bonds or debentures or for the purpose of providing working capital.

(6) The Corporation may receive, for the rendering of any of the services mentioned in sub-section (3), such commission or other
25 consideration as may be agreed upon.

(7) If any question arises whether a transaction undertaken by the Corporation is for the purpose of providing finance or refinance for the development of agriculture in India, the matter shall be referred to the Reserve Bank and the decision of the Reserve Bank
30 thereupon shall be final.

23. The Corporation shall not, without the prior approval in writing of the Reserve Bank, enter into any transaction under clause (a) or clause (b) or clause (c) of sub-section (3) of section 22 involving an amount exceeding fifty lakhs of rupees. Limit of accommodation.

35 24. In entering into any transaction under section 22 with an eligible institution, the Corporation may impose such conditions as it may think necessary or expedient for protecting the interests of the Corporation. Power to impose conditions for accommodation.

Power to call
for . repay-
ment before
agreed
period.

25. Notwithstanding anything to the contrary contained in any agreement, the Corporation may, by notice in writing, require any eligible institution to which it has granted any loan or advance to discharge forthwith in full its liabilities to the Corporation:—

(a) if it appears to the Board that false or misleading information in any material particular was given in the application for the loan or advance; or 5

(b) if the eligible institution has failed to comply with any of the terms of its contract with the Corporation in the matter of the loan or advance; or 10

(c) if there is a reasonable apprehension that the eligible institution is unable to pay its debts or that proceedings for liquidation may be commenced in respect thereof; or

(d) if for any reason it is necessary to do so to protect the interests of the Corporation. 15

Deposit
accounts
and invest-
ments.

26. All moneys belonging to the Corporation which may not for the time being be required by it shall be invested in promissory notes, stock or securities of the Central Government and all other moneys shall be deposited with the Reserve Bank or with any agency of the Reserve Bank or, in consultation with the Reserve Bank, with 20 a State co-operative bank or a scheduled bank.

CHAPTER V

ACCOUNT AND AUDIT

Preparation
of balance-
sheet, etc., of
Corporation.

27. (1) The balance-sheet and accounts of the Corporation shall be prepared and maintained in such form and manner as may be prescribed. 25

(2) The Board shall cause the books and accounts of the Corporation to be balanced and closed as on the thirtieth day of June, each year.

Disposal of
profits.

28. (1) The Corporation shall establish a reserve fund by transferring such sums as it may deem fit out of its net annual profits before declaring a dividend. 30

(2) After making provision for bad and doubtful debts, depreciation of assets and all other matters which are usually provided for by

bankers, the Corporation may out of its net annual profits declare a dividend:

Provided that for so long as the reserve fund is less than the paid-up share capital of the Corporation and until there have been repaid 5 to the Central Government such sums, if any, as that Government may have paid under the guarantee given in pursuance of section 6 or under any guarantee given in pursuance of sub-section (1) of section 20 or sub-section (2) of section 21, the rate of such dividend shall not exceed the rate guaranteed by the Central Government 10 under section 6.

29. (1) For a period of fifteen accounting years following the accounting year during which the Corporation is established, all dividends accruing on the shares of the Corporation held by the Reserve Bank shall, instead of being paid to that Bank, be held by the 15 Corporation as a special deposit in a separate account and no interest shall be payable on such deposit. Special deposit.

(2) On the expiry of the period referred to in sub-section (1), the Corporation shall, if so required by the Reserve Bank, pay to it the said special deposit and in case the Reserve Bank does not require 20 the same to be paid to it, continue the said special deposit on such terms and on such conditions, including payment of interest, and for such period as may be mutually agreed upon between the Corporation and the Reserve Bank.

(3) No shareholder of the Corporation other than the Reserve 25 Bank shall have any claim to the special deposit referred to in sub-section (1).

30. (1) The affairs of the Corporation shall be audited by an Audit. auditor duly qualified to act as auditor under sub-section (1) of section 226 of the Companies Act, 1956, who shall be appointed by the 30 Board with the previous approval of the Reserve Bank and shall receive such remuneration from the Corporation as the Board may, with the approval of the Reserve Bank, fix:

2 of 1956.

Provided that the first auditor shall be appointed by the Reserve Bank within one month from the establishment of the Corporation on 35 such terms and conditions as the Reserve Bank may determine.

(2) The auditor so appointed shall hold office from the conclusion of an annual general meeting of the Corporation until the conclusion of the next annual general meeting:

Provided that the first auditor shall hold office until the conclusion 40 of the first annual general meeting.

(3) The auditor shall be supplied with a copy of the annual balance-sheet of the Corporation and it shall be his duty to examine it together with the accounts and vouchers relating thereto and he shall have a list delivered to him of all books kept by the Corporation and shall at all reasonable times have access to the books, accounts, 5 vouchers and other documents of the Corporation.

(4) The auditor may, in relation to the accounts of the Corporation, examine any director of the Board or any officer or employee of the Corporation, and shall be entitled to require from the officers of the Corporation such information and explanation as he may think 10 necessary for the performance of his duties.

(5) The auditor shall make a report to the Corporation upon the annual balance-sheet and accounts examined by him and in every such report he shall state whether in his opinion the balance-sheet is a full and fair balance-sheet containing all necessary particulars and 15 properly drawn up so as to exhibit a true and fair view of the state of affairs of the Corporation and in case he had called for any explanation or information from the Board, whether it has been given and whether it is satisfactory.

(6) Without prejudice to anything contained in the preceding sub- 20 sections, the Central Government may at any time appoint the Comptroller and Auditor-General of India to examine and report upon the accounts of the Corporation, and any expenditure incurred by him in connection with such examination and report shall be payable by the Corporation to the Comptroller and Auditor-General of India. 25

**General
meetings.**

31. (1) A general meeting shall be held annually (hereinafter referred to as the annual general meeting) at a place in India where there is an office of the Corporation within three months from the date on which the annual accounts of the Corporation are closed, and any other general meeting may be convened by the 30 Board at any other time:

Provided that the Central Government may extend the time within which any annual general meeting shall be held, by a period not exceeding one month.

(2) The shareholders present at the annual general meeting shall 35 be entitled to discuss the annual accounts, the report of the Board on the working of the Corporation throughout the year and the auditor's report on the annual balance-sheet and accounts.

32. (1) The Corporation shall furnish, from time to time, to the **Returns.**
Central Government and to the Reserve Bank such returns as the
Central Government or the Reserve Bank may require.

5 (2) The Corporation shall furnish to the Central Government and
the Reserve Bank within fifteen days of the conclusion of the an-
nual general meeting in respect of any year, a copy of its balance-
sheet as on the close of that year together with a profit and loss
account for the year and a report of the working of the Corporation
10 during the year, and copies of the said balance-sheet, profit and loss
account and report shall be published in the Official Gazette and
shall be laid before each House of Parliament.

CHAPTER VI

MISCELLANEOUS

33. In the discharge of its functions under this Act, the Corpora- **Power of**
15 tion shall be guided by such directions in matters of policy involving **Central**
public interest as the Central Government may after consulting the **Government**
Reserve Bank give to it in writing, and if any question arises whether **to give**
the direction relates to a matter of policy involving public interest, **directions.**
the decision of the Central Government thereon shall be final.

20 34. (1) The Corporation may appoint such number of staff as it **Staff of**
considers necessary or desirable for the efficient performance of its **Corporation.**
functions and determine the terms and conditions of their appoint-
ment and service.

(2) Without prejudice to the provisions of sub-section (1), it shall
25 be lawful for the Corporation to utilise, and for the Reserve Bank
to make available the services of, such staff of the Reserve Bank on
such terms and conditions as may be agreed upon between the Cor-
poration and the Reserve Bank.

35 35. (1) The Corporation shall have free access to all such records **Corporation**
of an eligible institution or any person availing of a loan or advance **to have**
from such eligible institution perusal whereof may appear to the **access to**
Corporation to be necessary in connection with the providing of fin- **records.**
ance or other assistance to such eligible institution or the refinancing
of the loan or advance made to such person by the eligible institution.

35 (2) The Corporation may require any eligible institution or person
referred to in sub-section (1) to furnish to it copies of any of the
records referred to in that sub-section and the eligible institution or
the person, as the case may be, shall be bound to comply with such
requisition.

Act 18 of 1891 to apply to books of Corporation. 36. The Corporation shall be deemed to be a bank for the purposes of the Bankers' Books Evidence Act, 1891.

Liquidation of Corporation. 37. No provision of law relating to the winding up of companies or corporations shall apply to the Corporation, and the Corporation shall not be placed in liquidation save by order of the Central Government and in such manner as it may direct. 5

Indemnity of directors. 38. (1) Every director shall be indemnified by the Corporation against all losses and expenses incurred by him in, or in relation to, the discharge of his duties, except such as are caused by his own wilful act or default. 10

(2) A director shall not be responsible for any other director or for any officer or other employee of the Corporation or for any loss or expenses resulting to the Corporation from the insufficiency or deficiency of value of, or title to, any property or security acquired or taken on behalf of the Corporation or the insolvency or wrongful act of any debtor or any person under obligation to the Corporation or anything done in good faith in the execution of the duties of his office in relation thereto. 15

Defects in appointment not to invalidate acts, etc. 39. (1) No act or proceeding of the Board or of any committee of the Corporation shall be questioned on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Board or committee or on the ground of any director or member of any committee having acted or taken part in any proceeding in contravention of section 18. 20

(2) No act done by any person acting in good faith as a director of the Board or as a member of a committee of the Corporation shall be deemed to be invalid merely on the ground that he was disqualified to be a director or that there was any other defect in his appointment. 25

protection of action taken under the Act. 40. No suit or other legal proceeding shall lie against the Corporation or any director or any officer of the Corporation or any other person authorised by the Corporation to discharge any functions under this Act for any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act. 30

Declaration of fidelity and secrecy. 41. Every director, auditor, officer, or other employee of the Corporation or any employee of the Reserve Bank, whose services are utilised by the Corporation under sub-section (2) of section 34, shall, before entering upon his duties, make a declaration of fidelity and secrecy in the form set out in the First Schedule to this Act. 35

42. Any sum paid by the Central Government under the guarantee given in pursuance of section 6 or, under any guarantee given in pursuance of sub-section (1) of section 20 or sub-section (2) of section 21 shall not be treated as the income, profits and gains of the Corporation, and any interest paid by the Corporation on debentures or bonds or on foreign currency borrowed under sub-section (1) of section 21 out of such sum shall not be treated for the purpose of income-tax or super-tax as expenditure incurred by it:

Provisions relating to income-tax and super-tax.

Provided that in the case of any shareholder such portion of a dividend as has been paid out of any such sum advanced by the Central Government shall be deemed to be his income from interest on securities declared to be income-tax free within the meaning of clause (i) of section 86 of the Income Tax Act, 1961.

43 of 1961.

43. The Board may, by general or special order, delegate to any committee of the Board or to the Chairman or managing director or any other officer of the Corporation, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and duties under this Act as it may deem necessary.

Delegation of powers.

44. (1) Whoever in any return, balance-sheet, or other document or in any information required or furnished by or under or for the purposes of any provision of this Act, wilfully makes a statement which is false in any material particular, knowing it to be false, or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

Penalties.

(2) If any person fails to produce any book, account or other document, or to furnish any statement or information which, under the provisions of this Act, it is his duty to produce or furnish, he shall be punishable with a fine which may extend to two thousand rupees in respect of each offence and in the case of a continuing failure, with an additional fine which may extend to one hundred rupees for every day during which the failure continues after conviction for the first such failure.

45. (1) Where an offence has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences by companies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he

proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. 5 10

Explanation.—for the purposes of this section—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm. 15

Powers of
Board to
make regu-
lations.

46. (1) The Board may, with the previous approval of the Reserve Bank, make regulations not inconsistent with this Act to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act. 20

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for—

(a) the manner in which and the conditions subject to which the first allotment of shares of the Corporation shall be made;

(b) the manner in which and the conditions subject to which the shares of the Corporation may be held and transferred, and generally all matters relating to the rights and duties of the shareholders; 25

(c) the holding and conduct of elections under this Act, including the final decision on doubts or disputes regarding the validity of elections; 30

(d) the manner in which general meetings shall be convened, the procedure to be followed thereat and the manner in which voting rights may be exercised;

(e) the fees or allowances that may be paid to the directors; 35

(f) the times and places of the meetings of the Board or of any committee constituted under this Act and the procedure to

be followed at such meetings including the quorum necessary for the transaction of business;

(g) the number of directors constituting the Executive Committee, and the functions that such committee shall discharge;

5 (h) the functions which any other committee may discharge under this Act;

(i) the fees and allowances that may be paid to the members of a committee other than directors;

10 (j) the manner and terms of issue and redemption of bonds and debentures by the Corporation;

(k) the conditions which the Corporation may impose in granting loans and advances;

(l) the manner and conditions subject to which the Corporation may borrow in foreign currency;

15 (m) the form and manner in which the balance-sheet and the accounts of the Corporation shall be prepared or maintained;

(n) the forms of returns and statements required under this Act;

20 (o) the duties and conduct, salaries, allowances and conditions of service of officers and other employees;

(p) the establishment and maintenance of provident or other benefit funds for employees of the Corporation; and

(q) generally, the efficient conduct of the affairs of the Corporation.

25 (3) Any regulation which may be made by the Board under this Act may be made by the Reserve Bank within three months of the establishment of the Corporation; and any regulation so made may be altered or rescinded by the Board in the exercise of its powers under this Act.

30 (4) No regulations made under this Act shall have effect until they are published in the Official Gazette.

(5) All regulations made under this Act shall be placed before each House of Parliament.

47. The enactments specified in the Second Schedule to this Act shall be amended in the manner provided therein.

Amendment
of certain
enactments

THE FIRST SCHEDULE

(See section 41)

Declaration of fidelity and secrecy

I do hereby declare that I will faithfully, truly and to the best of my skill and ability execute and perform the duties required of me as director, auditor, officer or other employee (as the case may be) of the Agricultural Refinance Corporation and which properly relate to the office or position held by me in the said Corporation.

I further declare that I will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the affairs of the Agricultural Refinance Corporation or to the affairs of any person having any dealing with the said Corporation; nor will I allow any such person to inspect or have access to any books or documents belonging to or in the possession of the Agricultural Refinance Corporation and relating to the business of the said Corporation or the business of any person having any dealing with the said Corporation.

(Signature.)

Signed before me.

THE SECOND SCHEDULE

20

(See section 47)

Amendment of certain enactments

PART I

AMENDMENTS TO THE RESERVE BANK OF INDIA ACT, 1934 (2 OF 1934)

Amendments

25

1. In section 2, for clause (a), substitute the following clauses, namely:—

‘(a) “Agricultural Refinance Corporation” means the Agricultural Refinance Corporation established under section 3 of the Agricultural Refinance Corporation Act, 1962;

30

(aa) "the Bank" means the Reserve Bank of India constituted by this Act'.

2. In section 17,—

(a) after clause (4D), insert the following clause, namely:—

5 “(4E) the making to the Agricultural Refinance Corporation of loans and advances repayable on the expiry of fixed periods not exceeding eighteen months from the date of the making of the loan or advance, against the security of stocks, funds and securities (other than immovable property)
10 in which a trustee is authorised to invest trust money by any law for the time being in force in India.”;

(b) in clause (8A), after the words “the capital of”, insert the words “the Agricultural Refinance Corporation,”.

PART II

15 AMENDMENTS TO THE INDUSTRIAL DISPUTES ACT, 1947 (14 OF 1947)

In section 2, in sub-clause (i) of clause (a), after the words “to any industrial dispute concerning” insert the words “the Agricultural Refinance Corporation established under section 3 of the Agricultural Refinance Corporation Act, 1962, or”.

STATEMENT OF OBJECTS AND REASONS

The question of establishing an independent statutory Corporation for facilitating the provision of term credit for agricultural development has been under consideration for some time. The new institution is intended to assist projects which cannot ordinarily be financed by established agencies such as the apex co-operative and land mortgage banks, either because the amounts involved in each individual scheme or project are very large or because the period for which credit is necessary is relatively long. The new Corporation will be predominantly a refinancing agency, providing the necessary resources for these purposes to other primary lenders.

2. It has been considered desirable, in view of the important role which the new corporation is expected to play in promoting the development of agriculture and other allied activities, that its duties, rights and obligations should be prescribed clearly by law. The Bill is intended to give effect to the arrangements which have been proposed in connection with the establishment of the Corporation. The notes on clauses explain in detail the various provisions of the Bill.

NEW DELHI;

MORARJI DESAI.

The 29th November, 1962.

Notes on clauses

Clause 2 defines the words and expressions used in the Bill. Agriculture, in accordance with the definition for the purposes of the Bill, will include animal husbandry, dairy farming, pisciculture, poultry farming and stock breeding. Eligible institutions will normally be the State co-operative and the State land mortgage banks and they will be entitled to the facility of refinance in respect of loans or advances made by them, but it will be open to the Corporation, with the approval of the Reserve Bank, to treat any co-operative society as an eligible institution for the purpose of granting loans or advances directly to it.

Clauses 3 and 4 provide for the establishment of the Corporation, the location of its head office at Bombay, and the other offices or agencies of the Corporation.

Clauses 5 to 7 provide for the capital structure, the allotment of shares and the ownership of the Corporation. The authorised capital will be Rs. 25 crores.

A sum of Rs. 5 crores out of the Corporation's authorised capital will be issued and paid-up in the first instance. Fifty per cent. of the capital thus issued and paid-up will be allotted to the Reserve Bank. An amount not exceeding thirty per cent. may be allotted, on application, to State co-operative and land mortgage banks, while an amount not exceeding twenty per cent. may be allotted to scheduled banks, the Life Insurance Corporation, insurance and investment companies and other financial institutions. Shares which are not taken up within the respective categories, by the institutions for which they are intended will be allotted to the Reserve Bank in addition to its normal fifty per cent. share, but such shares, acquired in excess of its statutory minimum holdings, may be transferred by the Reserve Bank at a later stage to the institutions which are eligible to be, or to become, shareholders of the Corporation, within the quotas earmarked for each category, so long as the effect of such transfers is not to increase the holding of any individual institution beyond ten per cent. of the total value of the shares intended for the category to which it belongs.

Any issue of capital, after the initial amount of Rs. 5 crores has been allotted and paid-up, will be offered in the proportions in which the initial issue was intended to be allotted, but the ceiling for shareholding by any individual institution will not be enforced at this stage.

Clauses 6 and 7 provide for the shares of the Corporation being guaranteed by the Central Government as to the repayment of the principal and the payment of dividends at a rate to be determined by the Central Government. *Clause 7* provides that the shares of the Corporation shall be deemed to be trustee securities or approved securities for the purposes of the Trusts Act, the Banking Companies Act and the Insurance Act.

Clause 8 provides for a register of shareholders to be maintained by the Corporation and also makes it clear that notices of trusts in respect of the shares shall not be receivable by, or bind, the Corporation.

Clauses 9 to 15 provide for the Board of Directors of the Corporation. The Corporation will have nine directors with a Deputy Governor of the Reserve Bank as the Chairman. Three nominees of the Central Government, one nominee of the Reserve Bank, one elected director each representing the State co-operative banks, the State land mortgage banks, and all the other financial institutions which are shareholders, will be ordinary directors. A managing director will be appointed with the approval of the Reserve Bank. The provisions regarding the terms of office and qualifications for appointment as directors are based generally on the corresponding provisions relating to the State-associated banks and the deposit insurance corporation.

Clauses 16 to 18 provide for meetings of the Board of directors and its committees, subject to the regulations which are to be made for the purpose. It has been provided that interested directors shall not participate at these meetings.

Clause 19 provides for the grant of an interest-free loan of Rs. 5 crores to the Corporation for a period of fifteen years. It is intended that the investment income on this amount should be available to the Corporation for enabling it to meet its expenses during this period.

Clause 20 provides for the borrowing of money by the Corporation (a) by the issue of bonds or debentures, (b) from the Reserve Bank against trustee securities for periods not exceeding eighteen months and (c) from the Central Government or other institutions approved by the Government and for the acceptance of deposits from the public for fixed periods of twelve months or more. The total amount borrowed under clauses 19 and 20 is not to exceed twenty times the paid-up capital and reserves.

Clause 21 provides for the borrowing of money in foreign currency by the Corporation against the guarantee of the Central Government.

Clause 22 provides that the Corporation shall grant assistance to eligible institutions only for the purpose of promoting agricultural development. The assistance provided by the Corporation will normally be in the form of refinance against loans or advances granted by the State co-operative, State land mortgage and scheduled banks for periods not exceeding twenty-five years or in the form of subscriptions to the debentures of land mortgage banks for similar periods, but in certain exceptional cases, direct assistance to co-operative societies recognised by the Corporation for this purpose with the approval of the Reserve Bank may also be granted.

The amounts due to the Corporation from institutions which are assisted by it will be guaranteed by the State Governments concerned.

Clause 23 restricts the amount of the assistance granted by the Corporation in connection with any individual transaction to Rs. 50 lakhs.

Clauses 24 and 25 provide for the grant of powers to the Corporation to impose suitable conditions in regard to its loans or to call up its loans before the due dates, if it is considered necessary or expedient to do so.

Clause 26 provides for the investment of the surplus funds of the Corporation in securities of the Central Government and for the other funds with the Reserve Bank or with co-operative or scheduled banks approved by the Reserve Bank.

Clauses 27 and 28.—*Clause 27* provides for the preparation of balance-sheets as at the end of the co-operative year, i.e. at the end of June and *Clause 28* provides for the grant of a dividend from out of the surplus profits of the Corporation and for the restriction of the rate of this dividend while any amount remains due to be paid to the Central Government on account of its guarantee.

Clause 29 provides for the dividends accruing to the Reserve Bank during a period of fifteen years to be deposited free of interest with the Corporation and for the continuance or return of the deposit after that period. The intention is to permit the grant of ways and means assistance to the Corporation and to enable it to utilise for its own purposes the investment income on account of these funds.

Clauses 30 to 32 make the usual provisions regarding audit, including a special audit by the Comptroller and Auditor-General in case this becomes necessary, the holding of a general meeting and the submission of the accounts and the annual report to the Central Government and Parliament.

Clause 33 enables the Central Government to give directions to the Corporation in regard to matters of policy involving the public interest.

Clauses 34 to 36 and 38 to 40 provide for the recruitment of staff, access to records essential for the Corporation's purposes, the grant to the Corporation of the facilities available under the Bankers' Books Evidence Act, the indemnity of directors, and the protection or validation of action taken by the Corporation.

Clause 37 provides that the Corporation cannot be taken into liquidation except in accordance with the orders of the Central Government.

Clause 41 and the First Schedule provide for declarations of fidelity and secrecy on the part of the directors and employees.

Clause 42 makes it clear that any amount received by the Corporation from the Central Government in pursuance of the Central Government's guarantee shall not be treated as income, profits or gains of the Corporation for the purposes of income-tax or super-tax.

Clauses 43 to 45 provide for the delegation of powers by the Board of directors of the Corporation and for penalties in respect of offences, including offences by companies.

Clause 46 provides for regulations to be made by the Board of Directors of the Corporation in order to carry out the purposes of the Act.

Clause 47 and the Second Schedule provide for consequential amendments of the Reserve Bank of India Act, 1934, and for an amendment of the Industrial Disputes Act, 1947 in order to make it clear that the appropriate Government in relation to any industrial dispute involving the Corporation will be the Central Government.

Financial Memorandum

Clause 6 of the Bill provides that the shares of the proposed Corporation shall be guaranteed by the Central Government as to the repayment of principal and the payment of a minimum annual dividend at such rate as may be fixed by the Central Government. Clause 19 provides that the Central Government may after due appropriation by law grant an interest-free loan to the Corporation of a sum not exceeding Rs. 5 crores. Sub-clause (1) (a) of clause 20 provides that the bonds and debentures issued by the Corporation shall be guaranteed by the Central Government sub-clause 1(c) of that clause provides for the grant of further loans, if necessary, by the Central Government to the Corporation and sub-clause (2) of clause 21 provides that the Central Government may in addition guarantee loans in foreign currency obtained by the Corporation from any financial institution. Clause 42 makes it clear that any sums which may have to be advanced to the Corporation by the Central Government for ensuring the repayment of any principal or dividend guaranteed by the Government will not attract income-tax.

2. While provision will have to be made in pursuance of clause 19 for the grant of an interest-free loan of Rs. 5 crores to the Corporation by the Central Government, it is not clear at this stage whether any further loans will be necessary or whether any payments will be necessary on account of any guarantees by that Government.

BILL NO. 121 OF 1962

A Bill further to amend the Representation of the People Act, 1950.

BE it enacted by Parliament in the Thirteenth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Representation of the People (Amendment) Act, 1962.

Amendment of Fourth Schedule, Act 43 of 1950.

2. In the Fourth Schedule to the Representation of the People Act, 1950,—

(a) under the heading "MADRAS", for the entry "4. Class I Panchayats, that is to say, Panchayats notified by the State Government in the Official Gazette as Panchayats which exercise jurisdiction over an area containing a population of not less than 10 five thousand and whose income for the financial year immediately preceding the date of the notification was not less than ten thousand rupees.", the following entry shall be substituted, namely:—

"4. Town Panchayats notified under the Madras Panchayats Act, 1958 (Madras Act XXXV of 1958), that is to say, Panchayats having a population estimated at not less than five thousand and an annual income estimated at not less than ten thousand rupees.";

(b) under the heading "MAHARASHTRA", for the existing 20 entries, the following entries shall be substituted, namely:—

"1. Municipalities.

2. Cantonment Boards.

3. Town Committees.

4. Zilla Parishads.”;

(c) under the heading “UTTAR PRADESH”, after the entry “5. Notified Area Committees”, the entry “6 Kshettra Samitis.” shall be inserted.

STATEMENT OF OBJECTS AND REASONS

The local authorities specified in the Fourth Schedule to the Representation of the People Act, 1950, in pursuance of article 171(3) of the Constitution read with section 27(2) of the above-mentioned Act form the basis of the electorate of local authorities' constituencies of the State Legislative Councils. Unless the lists of these local authorities are kept up-to-date, there are difficulties in the holding of bye-elections from the local authorities' constituencies. Recently there have been changes in the lists of local authorities for Maharashtra, Madras and Uttar Pradesh. With the inauguration of Panchayat Raj in Maharashtra, District Boards, District Local Boards and Janapada Sabhas (Rural Circle) have been replaced by Zilla Parishads. In Madras "Class I Panchayats" have been reclassified as ~~Class I Panchayats~~ and in Uttar Pradesh ~~Class I Panchayats~~ "Panchayat Samitis" have been introduced by the U.P. Kshettra Samitis and ~~Class I Panchayats~~ Parishads Act, 1961. The State Governments concerned want these new local bodies to be mentioned in their respective lists of local authorities in the Fourth Schedule. Any change in the lists of these local authorities can only be effected by Parliament by law. Accordingly the Bill seeks to make the necessary changes in the lists of local authorities in the Fourth Schedule to give effect to the above proposals for the State Governments.

B. MISRA.

NEW DELHI;
The 29th November, 1962.

M. N. KAUL,
Secretary